

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	File No. EB-01-DL-703
Friendship Cable of Texas, Inc.)	
Physical System ID 005073)	NAL/Acct. No. 200232500002
Vernon, Texas 75111)	
)	FRN 0004-9995-61
)	

FORFEITURE ORDER

Adopted: May 8, 2002

Released: May 13, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000), to Friendship Cable of Texas, Inc. (“*Friendship*”), Physical System ID 005073, for its willful and repeated violation of Sections 76.605(a)(12) and 76.611(a) of the Commission’s Rules (“*Rules*”).¹ The noted violations involve Friendship’s failure to comply with the Commission’s cable signal leakage standards.

2. On February 4, 2002, the District Director of the Commission's Dallas, Texas Field Office (“*Dallas Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”)² in the amount of eight thousand dollars (\$8,000). Friendship filed a response on February 27, 2002.

II. BACKGROUND

3. On September 24 and 25, 2001, a Commission agent from the Dallas Office conducted an inspection of the portion of Friendship's cable system serving Vernon, Texas, to identify leaks and determine compliance with the basic signal leakage criteria. The agent identified and measured six leaks, which ranged from 177 μV/m to 2,415 μV/m. The system was found to have a Cumulative Leakage Index (“*CLI*”) (10 log I_∞) value of 72.7, which is significantly in excess of the maximum allowable level of 64.³

¹ 47 C.F.R. § 76.605(a)(12) and 76.611(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232500002 (Enf. Bur., Dallas Office, released February 4, 2002).

³ A maximum CLI of 64 is the basic signal leakage performance criteria of Section 76.611(a)(1) of the

4. On September 25, 2001, the Commission's Dallas Office contacted Friendship at their headquarters in Tyler, Texas and verbally ordered Friendship to cease operation on aeronautical band frequencies until the leaks were repaired and the system complied with the basic signal leakage criteria. The Dallas Office followed the oral order with a written *Order to Cease Operations*, delivered by facsimile and by regular mail on September 25, 2001.⁴

5. On September 26, 2001, Friendship informed the Commission's Dallas Office that the system was in compliance with the leakage restrictions and requested permission to resume normal operations. The Dallas Office granted Friendship's request to resume normal operations. On September 27, 2001 an agent from the Commission's Dallas Office conducted a follow-up inspection and found the system to be in compliance with the basic signal leakage criteria.

6. On February 4, 2002, the District Director of the Dallas Office issued a *NAL* to Friendship for its failure to comply with the signal leakage standards. On February 27, 2002, the Bureau received a response to the *NAL*. In its response, Friendship does not dispute the violations. Rather, Friendship states that it has filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code and, consequently, requests a waiver of the proposed forfeiture.

III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁵ Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). In examining Friendship's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

8. Friendship has acknowledged that the violations for which it was cited did, in fact, occur. Because there is no dispute as to whether the violations occurred, we affirm issuance of the forfeiture for violation of Sections 76.605(a)(12) and 76.611(a) of the Rules.

9. Friendship seeks waiver of the forfeiture because it has filed bankruptcy. However, as explicitly stated in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Friendship did not provide any financial documentation in support

Rules. Leakage that exceeds this level is deemed to pose a serious threat to air traffic safety communications.

⁴ See 47 C.F.R. 76.613(c).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

of its request for waiver of the forfeiture and, therefore, we have no basis upon which to analyze its inability to pay claim. Further, although there is precedent for reducing or rescinding a forfeiture based on bankruptcy in certain circumstances,⁸ we do not believe that Friendship has justified a reduction or rescission in this case because it has not provided financial documentation for the Bureau's analysis, and because, even though it has filed bankruptcy, it retains control over its assets. Moreover, filing for bankruptcy does not preclude the Commission from issuing an order imposing a forfeiture upon Friendship for violating its rules.⁹

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁰ Friendship Cable of Texas, Inc. IS LIABLE FOR A MONETARY FORFEITURE in the amount of eight thousand dollars (\$8,000) for violating Sections 76.605(a)(12) and 76.611(a) of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹¹ Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232500002, and FRN 0004-9995-61. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

⁸ See, e.g., *Dennis Elam, Trustee for Bakcor Broadcasting, Inc., Debtor*, 11 FCC Rcd 1137 (1996) (forfeiture rescinded after bankruptcy trustee was appointed and the violator was no longer associated with the subject radio stations); *Interstate Savings, Inc. d/b/a ISI Communications*, 12 FCC Rcd 2934 (CCB 1997) (forfeiture rescinded where trustee was appointed in Chapter 7 liquidation, removing violator from operating as a common carrier and from involvement in dissolution or distribution of assets. Requiring trustee to pay the forfeiture would diminish estate assets available to innocent creditors and serve no public interest purpose.).

⁹ See 11 U.S.C. § 362(b)(4). See *Coleman Enterprises, Inc.*, 16 FCC Rcd 24385, 24389 n. 28 (2000) (filing for chapter 11 bankruptcy does not preclude the Commission from issuing an *Order of Forfeiture*). See also *United States of America v. Commonwealth Companies, Inc.*, 913 F.2d 518 (8th Cir. 1990).

¹⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹¹ 47 U.S.C. § 504(a).

¹² See 47 C.F.R. § 1.1914.

12. IT IS FURTHER ORDERED that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Friendship Cable of Texas, Inc. at P.O. Box 9200, Tyler, Texas 75111.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau